Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

MANUEL A. IGLESIAS,

Petitioner,

v.

MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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12 pp

QUESTIONS PRESENTED

1. Whether Rule 56 of the Federal Rules of Civil Procedure requires the reversal of the District Court's granting of summary judgment on statute of limitations grounds, given the existence of material facts in genuine controversy concerning accrual of these employment discrimination actions, in light of standards set forth in Anderson v. Liberty Lobby, 477 U.S. 424, 106 S.Ct. 2505 (1986)?

   a. What consideration, weight and effect is to be accorded the jury determination and verdict of February 7, 1997, in favor of petitioner's assertion that he did not agree to resign but was dismissed?

2. Whether the Court of Appeals' decision is unsupported by Puerto Rico law and jurisprudence concerning employment discrimination cases, which establish that a plaintiff's claim cannot **accrue** until he is put on notice of a **date certain** on which the adverse employment action will take place?

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PETITION FOR WRIT OF CERTIORARI

Manuel A. Iglesias respectfully petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the First Circuit in this case, filed September 17, 1998. Rehearing of the appeal, sought pursuant to Rule 40 of the Federal Rules of Appellate Procedure, was denied on November 19, 1998.

OPINIONS BELOW

The First Circuit Court of Appeals affirmed the judgment of the United States District Court for the District of Puerto Rico, granting partial judgment dismissing discrimination claims. The First Circuit's opinion is reported at 98 WL 61134, ___ F.3d ____ (1st Cir. 1998) and is reprinted in the Appendix hereto at 3a-17a. The District Court's opinion of July 1, 1994, granting summary judgment for the respondents (Appendix 39a-45a) is unreported. The District Court's denial of petitioner's motion for reconsideration is reported at 918 F.Supp. 31 (D.P.R. 1996).

STATEMENT OF JURISDICTION

Petitioner invokes the jurisdiction of the Court to review the judgment of the Court of Appeals under 28 U.S.C. §1254(1).

The Opinion of the Court of Appeals from which the petitioner seeks review was filed on September 17, 1998. Petitioner timely sought rehearing pursuant to F.R.A.P. 40, within the extension of time allowed by that Court. Rehearing of the appeal was denied on November 19, 1998.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The texts of Puerto Rico Laws Ann., Tit. 29, §146 et seq. (1985) ["Law 100" of Puerto Rico], of 42 U.S.C. §2000e [Title VII of the Civil Rights Act of 1964] and of 29 U.S.C. §§621, et seq. [Age Discrimination in Employment Act - ADEA] are set forth in the Appendix at pp. 76a-143a and are listed in the table of contents.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

Manuel A. Iglesias (hereinafter "Iglesias") began working for defendant Mutual Life Insurance Company of New York (hereinafter "Mutual", "MONY" or "defendant") in 1976 as sales manager. Iglesias was promoted to Agency Manager effective January, 1981, with a guaranteed yearly salary of over $190,000.00 for the first three years of his employment as Agency Manager, based on his outstanding performance as sales manager.

By 1982, however, it became apparent to Iglesias that defendant company had altered his conditions of employment by withdrawing from his market, Puerto Rico, its individual non-cancelable disability insurance product ("D.I."). In doing so, MONY violated the clear terms of the contracts it had with Iglesias and with all field underwriters (sales agents) in Puerto Rico. At the time the pertinent facts of this case arose, Iglesias was the only Puerto Rican agency manager in the company. Furthermore, petitioner was the first Puerto Rican manager Mutual had ever had in its San Juan, Puerto Rico

agency. No other agency manager within the MONY network of agencies -- which in the 1980's exceeded 100 agencies throughout the United States and Puerto Rico -- was required to perform without the availability of the aforementioned D.I. product.

The removal of the D.I. produc. from the Puerto Rico market by MONY set off a chain of events which severely undermined the San Juan agency's performance. This decision by MONY was taken unilaterally by the company and was based solely on discriminatory animus toward Puerto Ricans. Iglesias was never consulted about this policy decision, which was maintained over the years despite his strenuous disagreement and that of all the field representatives with the San Juan agency.

Between 1982 and his forced departure from MONY in 1990, Manuel A. Iglesias complained vociferously, constantly and with reasoned arguments that MONY's decision to remove D.I. from Puerto Rico was bad business for the company, was based on incorrect analyses and premises (many of which were products of outright bigotry), and severely damaging to his agency. The MONY decision not to sell its individual non-cancelable D.I. was limited to Puerto Rico (and Puerto Ricans) and contravened the company's own stated policy: that a sale of life insurance without a sale of DI was only half a sale and was a disservice to the client. Nonetheless, MONY persisted blindly with its unwise and discriminatory policy, up to and past May 17, 1990, when Iglesias was forced to retire from the company.

This decision by the respondent had the direct result of negatively altering Iglesias' conditions, terms and privileges of employment with MONY. Among other effects, it limited sales,

decreased his personal income (which was based substantially on commissions from sales by his field representatives), and resulted in dissatisfactions and subsequent defections among his best field representatives. Ironically, the consequences of the company's misguided policy: higher agency expenses (related to recruitment and training of additional field personnel), fluctuating and declining sales, high sales staff turnover and others, eventually became the reasons used by the respondent as a pretense in its unjust and unwarranted discharge of petitioner.

In mid-1988, Iglesias' supervisor changed for the fourth time in two years. Robert Kramer, the new supervisor, found Manuel Iglesias to have a "poor performance". He then informed Iglesias that if sales did not improve by the end of 1988, Iglesias would be placed on probation for 1989. He also encouraged Iglesias to consider the option of early retirement.

Iglesias protested that he was being unfairly blamed for problems caused by the lack of the D.I. product in Puerto Rico, while being held up to the same performance standards as his peers, all of whom had access to the product. While he was giving consideration to the early retirement option and to other options to resolve the discriminatory situation he was facing on the job, Iglesias became temporarily disabled in late December, 1988, due a pre-existing cervical condition. Petitioner's short-term disability benefits as an employee of MONY were approved by the company and he remained on disability status as an employee until May, 1990. However, when he came off disability in May of 1990 and sought to return to work, Iglesias was unjustly dismissed by being forced to "retire" against his will. He commenced this action by filing the requisite discrimination complaint

with the Puerto Rico Department of Labor Antidiscrimination Unit and with the Equal Employment Opportunity Commission (EEOC), followed later by this civil action.

After over six (6) years of litigation before the District Court, a final judgment was entered on April 9, 1997, pursuant to a settlement agreement and stipulation of dismissal of the petitioner's Law 80 (unjust dismissal) claim[1]. Before that, however, the District Court had disposed of the petitioner's employment discrimination claims by means of summary judgment in favor of the respondent in 1994. That determination by the District Court was the subject of the appeal and rehearing petition before the Court of Appeals for the First Circuit and is the subject of this Petition for Writ of Certiorari.

B. PROCEDURAL HISTORY

The petitioner filed this civil action on April 17, 1991. Upon receipt of a right-to-sue letter from the EEOC, the petitioner filed an amended complaint of September 4, 1991. A responsive pleading was filed by the respondent on September 13, 1991.

Shortly thereafter, the respondent began filing its series of several dispositive motions, arguing that the petitioner's employment discrimination claims were time-barred. Petitioner opposed this motion and respondent replied.

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[1] See "Procedural History", infra., regarding the jury trial and verdict for petitioner, which gave rise to the settlement agreement and stipulation of dismissal.

On March 4, 1993 the Court referred all dispositive motions pending at that time to the U.S. Magistrate for analysis and recommendation. Little more than two weeks later, the U.S. Magistrate rendered a Report and Recommendation (Appendix pp. 50a-60a) **in which he denied dismissal based on the time-bar arguments advanced by the respondent**, but proceeded to rule in respondent's favor on the merits regarding the employment discrimination claims. Each party objected to this Report for separate reasons.

On July 1, 1994 the District Court issued its "Order In the Matter of Report and Recommendation" (Appendix pp. 36a-49a), in which it determined, inter alia, that the petitioner's employment discrimination claims were time-barred by the applicable one year statute of limitations. The Court entered a partial judgment, dismissing all of petitioner's employment discrimination claims, on July 8, 1994. (Appendix p. 50a). Said ruling only became "final" for purposes of this appellate court's jurisdiction with entry of the Final Judgment on April 9, 1997 (Appendix p. 18a).

Subsequently, the remaining Law 80 claim survived the lengthy dispositive motions stage and went to trial on February 4 through 7, 1997. During the trial and over petitioner's vigorous objections, the Court bifurcated the proceedings, requiring the jury to respond first to the respondent's affirmative defense, to wit: that Iglesias actually resigned voluntarily and was not terminated or forced to retire. The second question concerning the actual existence of an unjust dismissal was left for a second stage.

The first part of the trial **resulted in a jury verdict for the**

plaintiff. As indicated by the verdict form: the jury found that "Defendant dismissed or otherwise caused plaintiff's involuntary retirement from his employment as agency manager of Mutual of New York in Puerto Rico". (Appendix, pp. 19a). Hence, **the jury found that, contrary to the assertions of Mutual -- and to the earlier determination of the Court -- there was no agreement between the parties to terminate Iglesias' employment**. Yet the existence of the same alleged agreement between the parties was the basis for the District Court's decision, almost three (3) years earlier, that Iglesias had been on notice of the respondent company's intent to terminate him.

The second and final part of the jury trial never came to pass, as the Law 80 claim was resolved by the parties and the claim was voluntarily dismissed by stipulation. The resulting Final Judgment filed April 9, 1997 opened the way for the appeal and this subsequent Petition for Writ of Certiorari presented by the petitioner. The appeals were argued before this Court on February 26, 1998 and were decided on September 17, 1998. The petitioner requested Rehearing, pursuant to F.R.A.P. 40 on October 30, 1998.

REASONS FOR GRANTING THE WRIT

1. The Court of Appeals failed to recognize and apply the correct standard of review in its consideration of the District Court's granting of summary judgment on statute of limitations grounds, in which material facts in genuine controversy concerning accrual of the action were improperly resolved by the District Court.

As expressed on page 3 of the slip opinion in question, the review of the grant of summary judgment in this case is de novo. As stated by the United States Court of Appeals for the First Circuit:

> "When presented with a motion for summary judgment, courts should 'pierce the boilerplate of the pleadings and assay the parties' proof in order to determine whether trial is actually required.' "Summary judgment is therefore appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, **show that there is no genuine issue as to any material fact** and that the moving party is entitled to a judgment as a matter of law." A fact is material if it "carries with it the potential to affect the outcome of the suit under the applicable law." We review the record in the light most favorable to the nonmovant, **indulging all reasonable inferences in that party's favor**. [citations omitted, emphasis ours]

One Nat. Bank v. Antonellis, 80 F.3d 606, 608 (1st Cir. 1996).

Yet the Opinion and Order of the First Circuit in this case reveals a refusal to adhere to the aforementioned standard, in particular regarding the material facts in dispute. This crucial error by this Appellate Court requires the granting of this Writ of Certiorari. Material facts in genuine dispute must, at this stage, be viewed in the light most favorable to the petitioner -- the nonmoving party. See: Anderson v. Liberty Lobby, 477 U.S. 424, 106 S.Ct. 2505 (1986).; Díaz v. Martínez, 112 F. 3d 1 (1st Cir. 1997); Antonellis, supra.

In this case, the existence or lack of a "clear and unequivocal"

expression of intent by MONY to terminate Manuel Iglesias, especially in its February 9, 1989 letter, is at issue. At trial, the author of said letter himself denied any intent to "retire" or terminate the petitioner. **This is a crucial piece of evidence ignored by this appellate court, which undermines the district court's interpretation of the supposed "clear and unequivocal notice" of impending termination Mr. Iglesias had allegedly received.**

The Circuit Court of Appeals misread the record when it found that petitioner was put "on notice" that he had been fired in February, 1989. See: slip op. p. 4, n.2 That Court, and the District Court before it, disregarded the factual circumstances of February, 1989, which gave rise to the letter. This controversial and critical fact was not taken "in the light most favorable to the non-moving party".

The material facts surrounding the termination of Manuel Iglesias' employment, which are in genuine dispute, constitute ultimate facts in controversy and require a jury trial.

The United States Court of Appeals for the First Circuit has itself stated clearly that "[n]otwithstanding that recent case law has invited greater use of Rule 56, the test remains a fairly vigorous one." Lipsett v. U.P.R., 864 F.2d 881, 895 (1st Cir. 1988). See also: Prokey v. Watkins, 942 F.2d 67 (1st Cir. 1991).

The First Circuit has recently reiterated that "[a]n issue is genuine if it 'must be decided at trial because the evidence, viewed in the light most flattering to the non movant, would permit a rational fact finder to resolve the issue in favor of either party'." Mulero-Rodríguez v. Ponte, Inc., 98 F.3d 670, at 673 (1st Cir. 1996) (citing Medina-Muñoz

v. R.J. Reynolds Tobacco Co., 896 F.2d 5, 8 [1st Cir.1990]) See also: Wyner v. North American Specialty Insurance Co., 78 F.3d 752, 754 (1st Cir.1996). Cited in Fábregas v. I.T.T. Intermedia, 954 F.Supp. 32, 33 (D.P.R. 1997), citing Fed.R.Civ.P. 56(e).

Therefore, "no credibility assessments may be resolved in favor of the party seeking summary judgment." Woodman v. Haemonetics Corp., 51 F. 3d 1087, 1091 (1st Cir. 1995); Vélez-Gómez v. SMA Life Assurance Co., 8 F.3d 873, 877 (1st Cir. 1993)." Fábregas, supra.

Nonetheless, the Court of Appeals has disregarded this Honorable Court's admonition that "[i]n ruling upon a Rule 56 motion, 'a District Court must resolve any factual issues of controversy in favor of the non-moving party' only in the sense that, **where the facts specifically averred by that party contradict facts specifically averred by the movant, the motion must be denied**". Luján v. National Wildlife Federation, 497 U.S. 871, 888, 110 S.Ct. 3177, 3188 (1990). (emphasis ours) In the case at bar, the crucial material facts concerning when and how Iglesias received notice of termination -- if at all -- are in direct, genuine and fundamental dispute. To let the decision below stand would constitute a miscarriage of justice, impeding valid and substantial claims of employment discrimination to be determined on their merits. See, e.g. Hardin v. Straub, 490 U.S. 542, n.10, 109 S.Ct. 1998, 2003, n.10 (1989). It is necessary that this Court provide precise guidance on the need to balance the interest in prompt resolution of disputes with the countervailing interest in allowing aggrieved victims of employment discrimination to have their day in court.

While this case was before the District Court, the U.S. Magistrate

rendered a Report and Recommendation regarding the respondent's dispositive motions and petitioner's oppositions thereto (Appendix pp. 50a-60a). In said report he correctly set out the summary judgment standard, citing Celotex v. Catrett, 477 U.S. 317 (1986) and its progeny. The Magistrate recognized that if there is a presentation of evidence on which a jury could reasonably find for the petitioner regarding a material fact, summary judgment is not appropriate.

In its first dispositive motion, "Motion to Dismiss and/or For Partial Summary Judgment" the respondent argued that petitioner's employment discrimination claims were time-barred, because he allegedly "had agreed to retire" more than 300 days before his Title VII and ADEA claims and more than a year before his Puerto Rico Law 100 claim. The petitioner argued, based on deposition testimony, affidavits, letters and other documentary evidence that he never agreed to retire and was considering several options when he became disabled to work. Moreover, petitioner presented evidence that when he came off disability in May, 1990, he attempted to return to work, only to be forced into "early retirement" against his will.

Given this genuine controversy over this key material fact concerning the statute of limitations, the Magistrate found that there was evidence in the record tending to support both positions. He therefore concluded:

> There is clear genuine controversy in this case related to the issue of the applicable statutes of limitations. Therefore I recommend that defendant's motion to dismiss and/or summary judgment (Docket No. 15) be denied.

(Appendix p. 55a).

Despite the sound reasoning of this part of the Magistrate's Report and Recommendation, the District Court chose, fifteen months later, to disregard his recommendation, ordering dismissal of the employment discrimination claims pursuant to a summary judgment determination that they were time-barred. (Appendix pp. 36a-50a)

In its Order, the District Court did not explain the aforementioned summary judgment standards regarding material facts in genuine controversy. Rather, it limited itself to stating: "[a] timeliness defense may be ruled upon by way of summary judgment provided that the relevant facts are not in controversy. Jensen v. Frank, 912 F.2d 517, 520 (1st Cir. 1990)." [other citation omitted] As the Magistrate had anticipated, however, the relevant facts were clearly in dispute. The only way in which the District Court was able to reach its result was by incorrectly adjudicating genuine controversies of material facts which are properly for the fact-finder to resolve. See: Vélez-Gómez, 8 F.3d 873, 877 (1st Cir. 1993). In its decision, the District Court improperly made credibility determinations in favor of the moving party. See: Woodman v. Haemonetics Corp., 51 F. 3d 1087, 1091 (1st Cir. 1995). That fundamentally flawed reasoning and the incorrect credibility determinations upon which it was based, made by the District Court, were exposed and refuted by the Jury Verdict of February 7, 1997.

a. The Court of Appeals failed to consider the effect of the jury determination and verdict of February 7, 1997, in favor of petitioner's assertion that he did not agree to resign but was dismissed.

The Court of Appeals for the First Circuit did not address the effect that the jury determination has on prior "finding" by the District Court concerning the same factual disputes. That Court's finding that the February 9, 1989 letter (and earlier letter) was unequivocal notice of termination is in direct conflict with the respondent's own witness, Robert Kramer, **who specifically denied any intent to terminate the petitioner**[2].

In order to arrive at its determination, the jury in the unjust dismissal claim which survived the summary judgments by the District Court necessarily had to believe petitioner's version of what transpired between MONY and Mr. Iglesias between September, 1988 and May 17, 1990. The jury did not believe the content of the two letters MONY presented, dated December 28, 1988 and February 9, 1989, nor the testimony of Mr. Kramer himself, trying to demonstrate that Mr. Iglesias had agreed to retire well in late 1988 or early 1989, at the latest. More importantly, MONY established at trial that it never threatened Mr. Iglesias with termination up to and including May 17, 1990, when it forced Mr. Iglesias into what it alleged was "voluntary" early retirement.

This matter now stands adjudicated by the true finder of fact: the jury. It has been resolved and it constitutes the law of the case. The verdict is final and unreviewable. The fundamental rationale of issue preclusion dictates the clearly settled requirement that it be limited to

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[2] Note that the record indicates no communication between Kramer and Iglesias between December 31, 1988 and the February 9, 1989 letter, which would change the fact that Kramer never told plaintiff he would terminate him. In this circumstance, and given plaintiffs undisputed testimony of his condition in February, 1989, nothing could be more equivocal than MONY's communications.

matters that have actually been decided. See: Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction §4420, n.1, citing Montana v. U.S., 440 U.S. 147, 153, 99 S.Ct. 970, 974 (1979): "...once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits...." See also: RecoverEdge L.P. v. Pentecost, 44 F.3d 1284, 1291 (5th Cir. 1995) ("To define the issue that was actually litigated in the first proceeding, we look to what the jury actually decided.") Essential fact determinations are rightly entrusted to a properly instructed jury. City of St. Louis v. Prapotnick, 485 U.S. 112, 144, 108 S.Ct. 915, 935 (1988, Brennan, J., concurring).

The precedent established by the District Court is dangerous, creates uncertainty about the proper role of the jury, infringes on the historic role of the jury as ultimate fact-finder and may well generate otherwise unnecessary litigation. This Court's sound discretion would be properly exercised by considering and the full effect of the jury's factual determination when it conflicts with a district court's findings, as it does here.

3. The Court's decision is unsupported by Puerto Rico law and jurisprudence concerning employment discrimination cases, where a plaintiff's claim cannot **accrue** until he is put on notice of a **date certain** on which the adverse employment action will take place.

This case arises, in its first instance, under Puerto Rico Law 100, 29. P.R.L.A. §146, et seq., as amended. In its decision, the District Court totally disregarded pertinent case law of the Puerto Rico Supreme Court governing Law 100 and particularly governing accrual

of its one year statute of limitations. Under Law 100, a cause of action accrues at the moment the damage is suffered or from the moment the aggrieved party learns of the discriminatory action or the decision to take such an act. 31 P.R.L.A. § 5298; Olmo v. Young & Rubicam, 10 Official Translations of the Opinions of the Supreme Court of Puerto Rico 965, 972-74 (1981). Just as importantly, the Supreme Court has set forth the following guideline for evaluation of claims of this nature: a court "must take into consideration that, dealing with a reparations statute in the area of labor-management legislation, a liberal interpretation assists the employee." (translation ours) Id., citing Nazario v. Vélez 97 DPR 458, 460-461 (1969). Both the District Court and this appellate forum have failed to recognize either of these judicial mandates.

Law 100 has an "expansive and generous nature ... [which] has not gone unnoticed by [the] Court." Cuello Suárez v. PREPA, 798 F.Supp. 876 (D.P.R. 1992). It has been interpreted by body of case law which favors the interpretation of this statute liberally, in favor of the employee. See: Nazario v. Vélez 97 DPR 458, 460-461 (1969). The question of accrual of the Law 100 claim in this case is a question of Puerto Rico law. The Puerto Rico Civil Code states that "the time for the prescription for all types of actions, ... begins to run from the date at which time the action could have been exercised." 31 P.R.L.A. § 5299 (translation ours). In order to determine when accrual, one must examine the viability of legal action itself. See: Culebra Enterprises v. E.L.A., 91 J.T.S. 18 (P. R. Supreme Ct., 1991). Thus, **under Puerto Rico law, an employee cannot exercise an action for discrimination if he lacks the knowledge of an actual decision to terminate him.** See: Olmo v. Young & Rubicam, supra. at 972-74 and Puig Brutau [Caducidad, Prescripción Extintiva y Usucapión, Ed.

Bosch, p. 58 (Barcelona, 1988)]

In Alicea v. Córdova, 117 D.P.R. 676, 697-98 (1986), the Puerto Rico Supreme Court stated:

> Diverse facts require diverse solutions. Among the diverse categories of facts are ... embryonic or latent damages, not identifiable until a certain amount of time has passed; ... that of multiple damages, some of which are not discoverable until a later time; ....

Citing Rivera Encarnación v. E.L.A., 113 D.P.R. 383, 386 [1982]) (emphasis in original) (translation ours).

Petitioner respectfully asserts, that recent Puerto Rico Supreme Court case law on accrual of employment-related claims has been misinterpreted by this Court. The distinction of Vélez Rodríguez v. Pueblo International, ___ DPR ___, 94 JTS 37, 94 DTS 4:60 (1994) by the District Court in its Order denying Iglesias' Rule 60 motion is mistaken. (Appendix p. 22a-28a). In Vélez, that Court was called on to decide the question of accrual in an employment context, deciding, inter alia: "[w]e resolve that the statute of limitations should begin to run from the day the employee seeks reinstatement and his employer does not reinstate him". Id. at 74 (translation and emphasis ours). The Vélez Rodríguez Court went on to state:

> It must be remembered **that there is no law that requires the employer who dismisses an employee to inform the employee in a determinate manner, in other words, in writing or by any other manner of notification....**

> [citation omitted] **The aforementioned constitutes a great difficulty in determining when an employee is fired. Therefore, a readily identifiable date is justifiable, so that it offers a worker a warning of when he can exercise his rights**. (emphasis added)

Thus, the Puerto Rico Supreme Court found the law in question to be part of special social legislation, **which includes Law 100**. Compare: Nazario v. Vélez 97 DPR 458 (1969), supra. The distinction of Vélez made by the District Court and endorsed to by this Court (based on the lack, at bar, of a similar statutory provision allowing for reinstatement) misses the point. Under Puerto Rico employment law, an employee **must** receive a clear notification of intent to terminate -- which was lacking here -- in order for his employment claim to accrue. The so-called "notice" of termination in this case was neither "unequivocal" nor did it provide an "**unambiguous** indication that a **final** termination decision had been reached". See: Leithe v. Kennecott Copper Corp., 558 F.Supp. 1170, 1174 (D. Mass.) aff'd 720 F.2d 658 (1st Cir. 1983) (emphasis supplied); See: Mull v. Arco Durethene Plastics, Inc., 784 F.2d 284 (7th Cir 1986).

CONCLUSION

WHEREFORE petitioner respectfully requests that this Honorable Court grant a Writ of Certiorari.

Respectfully submitted, in San Juan, Puerto Rico, this 16th day of February, 1999.

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